

Interview Summary	Application No. 09/671,687	Applicant(s) WALLACH ET AL.	
	Examiner David A. Lambertson	Art Unit 1636	

All participants (applicant, applicant's representative, PTO personnel):

(1) David A. Lambertson.

(3) David Guzo.

(2) Roger Browdy.

(4) George Elliott.

Date of Interview: 21 September 2003.

Type: a) ☐ Telephonic b) ☐ Video Conference
c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____.

Claim(s) discussed: 2-4, 20-24 and 38-46.

Identification of prior art discussed: None.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.


PRIMARY EXAMINER

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135 (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The purpose of the interview was to further discuss the appropriateness of the Written Description rejection that the Examiner had maintained in a Final Office Action. Briefly, the rejection was based on the limitations in the claims reciting variants having 85% or 95% identity to SEQ ID NO:3, as well as fragments thereof, with each having the ability to bind to tumor necrosis factor receptor associated 2 protein (TRAF2). In the Final Office Action, the Examiner maintained that the instant specification did not describe either a representative number of variants or fragments of SEQ ID NO:3 having the TRAF2 binding activity or a structure-function relationship for SEQ ID NO: 3 such that the skilled artisan could envision the claimed genus of variants and fragments of SEQ ID NO:3 having the ability to bind to TRAF2. In the interview, Applicant's attorney, Mr. Roger Browdy, reiterated his arguments regarding Example 14 of the Revised Written Description Guidelines, stating that a description of a structure-function relationship regarding SEQ ID NO:3 (e.g., the identification of the active region/binding domain of the protein) was unnecessary in view of the guidelines presented by Example 14. Rather, Mr. Browdy argued that the identification of SEQ ID NO:3 and an associated activity, an adequate description of how to make variants of SEQ ID NO: 3, and an assay to determine whether the fragments/variants of SEQ ID NO:3 had the associated activity was sufficient to describe the claimed genus of variants and fragments of SEQ ID NO:3. Furthermore, Mr. Browdy indicated that he believed the Examiner's interpretation of Example 14, particularly the focus on the final statement on page 53 (wherein the procedure for making variants should have a particular identity to the identified protein and retain its activity), was too stringent, and that the Examiner was improperly eviscerating the Example by taking the single statement out of context. After listening to the arguments, the Biotechnology Practice Specialist (BPS) present as a mediator for the interview, indicated he favored Mr. Browdy's arguments over those made by the Examiner regarding the Written Description rejection. However, the BPS raised the question as to the enablement of the claimed variants/fragments of SEQ ID NO:3, indicating that teaching "how to identify" was not equivalent to teaching "how to make." The BPS then suggested that the Examiner retract the Written Description rejection and Finality of the previous Office Action, but apply the Enablement standards to the claimed variants/fragments of SEQ ID NO:3. At the conclusion of the interview, it was established that Mr. Browdy would file a request for reconsideration, to which the Examiner would respond by retracting the Written Description rejection and Finality of the previous Office Action. The Examiner would then re-open prosecution on the merits and apply the Enablement standards to the claims, thereby giving Mr. Browdy an appropriate opportunity to respond to the Enablement rejection.